

Honorable Marsha J. Pechman

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON AT SEATTLE

LINNE ROSE, individually and on behalf of all others similarly situated,

Plaintiffs,

V.

BEHR PROCESS CORP., BEHR PAINT CORP., MASCO CORP., THE HOME DEPOT, INC., and HOME DEPOT U.S.A., INC.,

Defendants.

NO. 2:17-cv-01754-MJP

**STIPULATED MOTION AND
ORDER TO STAY CASE**

NOTE ON MOTION CALENDAR

May 29, 2018

I. STIPULATION

Subject to approval of this Court, Plaintiff Linne Rose and Defendants Behr Paint Corp., Behr Process Corporation, Masco Corporation (collectively, "Behr"), The Home Depot, Inc. and Home Depot U.S.A., Inc. (collectively, "Home Depot"), by and through their attorneys, hereby stipulate and request an order staying this case, including all deadlines for discovery and other matters, pending a decision on the motion for preliminary and final approval of a class action settlement involving three related actions before other district courts (*Anderson v. Behr Process Corp.*, Case No. 1:17-cv-08735 (N.D. Ill.); *Bishop v. Behr Process Corp.*, Case No. 1:17-cv-04464 (N.D. Ill.); and *In re Behr*, Case No. 8:17-cv-01016 (C.D. Cal.)) ("Settled Cases").

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II. BACKGROUND

2 On May 1, 2018, plaintiffs in *Bishop* filed an amended complaint that incorporated the
3 named plaintiffs in *In re Behr and Anderson*. *See* Am. Compl. (*Bishop* Dkt. #60) at ¶¶ 7-39.
4 Shortly thereafter, on May 3, 2018, plaintiffs in *Bishop* filed a motion for preliminary approval
5 of a class action settlement. *See* Mot. for Preliminary Approval (*Bishop* Dkt. #61) at *passim*.

6 If the settlement agreement in *Bishop* is granted preliminarily approval, it would resolve
7 all claims against all Defendants in this action. *See* Behr Mem. in Opp. to Mot. for Transfer
8 and Consolidation, *In re: Behr DeckOver Marketing and Sales Practices Litigation*, MDL No.
9 2821 (Dkt. #30) at 1-2; Order Denying Transfer (MDL Dkt. #53) at 1.

10 Defendants expect that the court in *Bishop* will consider the motion for preliminary
11 approval on June 27, 2018. *See* Order (*Bishop* Dkt. #78).

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III. AUTHORITY

13 The Court “may, with propriety, find it is efficient for its own docket and the fairest
14 course for the parties to enter a stay of an action before it, pending resolution of independent
15 proceedings which bear upon the case.” *Levya v. Certified Grocers of California*, 593 F.2d
16 857, 863 (9th Cir. 1979). In considering whether a stay is appropriate, a district court should
17 consider (1) the possible damage that may result from granting a stay, (2) the hardship or
18 inequity a party may suffer in being required to go forward, and (3) the orderly course of justice
19 measured in terms of the simplifying or complicating of issues, proof, and questions of law
20 expected to result from a stay. *See id.* at 864; *CMAX, Inc. v. Hall*, 300 F.2d 265, 268 (9th Cir.
21 1962).

22 Courts in the Ninth Circuit and across the country routinely stay actions pending the
23 review and approval of class settlements in other district courts that would resolve all claims

1 brought in those actions. *See Annunziato v. eMachines Inc.*, 2006 U.S. Dist. LEXIS 97020,
2 *15-16 (C.D. Cal. 2006); *see also Albert v. Blue Diamond Growers*, 232 F. Supp. 3d 509
3 (S.D.N.Y. 2017); *Ali v. Wells Fargo Bank, N.A.*, 2014 U.S. Dist. LEXIS 26670, *7-9
4 (W.D.Okla. 2014); *Lindley v. Life Investors Ins. Co. of America*, 2009 U.S. Dist. LEXIS 94623,
5 *11 (N.D.Okla. 2009); *In re RC2 Corp. Toy Lead Paint Products Liability Litigation*, MDL No.
6 1893, 2008 U.S. Dist. LEXIS 14121, *13-14 (N.D.Ill. 2008). If this case is stayed pending
7 consideration of the *Bishop* Settlement, no Party will suffer any hardship. Plaintiff and all
8 members of the proposed class in this case have the right to participate in the settlement or opt
9 out of it to pursue his or her own litigation. And, any stay would be limited for any Plaintiff or
10 any member of the proposed class who opts out of the *Bishop* Settlement. *See Amchem Prods.*
11 *v. Windsor*, 521 U.S. 591, 597 (1997).

13 In contrast, if this litigation continues, all Parties would face the prospect of incurring
14 substantial and unnecessary litigation costs. *See Annunziato*, 2006 U.S. Dist. LEXIS 97020,
15 *15-16 (“[I]f the Ohio state court approves the preliminary settlement, [litigants] would be
16 saved from hundreds of hours spent on discovery and briefing in proceeding with this case....
17 this Court finds efficiency is best achieved by granting a ... stay.”). The Parties also
18 acknowledge that the settlement will help resolve this litigation. Thus, the Parties agree that a
19 stay of this action is appropriate, pending a decision on the motion for preliminary approval in
20 *Bishop*, and, a decision on any forthcoming motion for final approval.

23 The Parties agree to keep this Court informed regarding the status of the settlement of
24 the *Bishop* case by having Behr file a Status Report by July 13, 2018, and every 60 days
25 thereafter, reporting on the progress of preliminary approval, notice, and final approval of the
26 settlement.

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IV. CONCLUSION

2 Based on the above, the Parties hereby stipulate, agree and move, subject to the Court's
3 approval, that:

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1. This case should be stayed pending a decision on the motion for preliminary
5 approval in *Bishop, et al., v. Behr Process Corporation, et al.*, Case No.
6 1:17- cv- 04464 (N.D. Ill.), and, if preliminary approval is granted, through a
7 decision on any forthcoming motion for final approval;
- 8 2. Behr shall file a Status Report by July 13, 2018, and every 60 days thereafter,
9 reporting on the progress of preliminary approval, notice, and final approval.

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11 Stipulated and presented this 29th day of May, 2018.

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V. ORDER

It is so ordered.

Dated this 30th day of May, 2018.

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The Honorable Marsha J. Pechman
United States Senior District Court Judge

CERTIFICATE OF SERVICE

I hereby certify that on this 29th day of May, 2018, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system which caused all CM/ECF participants to be served by electronic means.

DATED this 29th day of May, 2018.

CARNEY BADLEY SPELLMAN, P.S.

By: *s/Andrea Williams*

Andrea Williams, Legal Assistant